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Book Review. Right to Counsel in Criminal Cases by Sheldon Krantz, et. al.

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Book Reviews

Right to Counsel in Criminal Cases: The Mandate of *Argersinger v. Hamlin.* By Sheldon Krantz et al. (Cambridge, Mass.: Ballinger Publishing Company, 1976. Pp. 892. $20.00.)

The U.S. Supreme Court's 1973 decision in *Argersinger* v. *Hamlin* recognized the states' duty to provide a lawyer, at public expense if necessary, for any criminal defendant to be imprisoned. This expanded acknowledgement of the right to counsel, from only the most serious offenses to many of the most trivial, was probably inevitable in light of the importance of personal liberty and legal equality in contemporary constitutional precepts. Contemporary practice is another matter.

The authors of this valuable study examine the unresolved doctrinal consequences of *Argersinger,* document the failure of compliance, suggest various strategies to improve present systems, and attempt to explore the larger consequences of governing the coarse business of the police court by the fine standards of procedural regularity. Their doctrinal and factual discussions are complete and necessary for any serious student of inferior courts. Their analyses of how to change the situation are ingenious guides for the reformer. Their larger observations are conventionally liberal in sentiment and belabored in execution.

As far as doctrine goes, the Supreme Court held in *Argersinger* that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial" (407 U.S. 25, 37 [1973]). The authors argue that this holding should be extended, in the words of the Sixth Amendment, to "all criminal prosecutions," whether imprisonment or fine results. This part of the book provides useful guidelines for how indigency is to be determined: the authors recommend that the defendant decide for himself or herself, although they suggest various possibilities for dealing with the political unpalatability of that standard through modification or disguise.

The factual data on which the study was based were gathered in two phases. First the investigators visited nine sites, primarily to collect observations and general information through interviews. Thereafter, four systems (Birmingham; Boston; Cleveland; and Saco, Maine) were chosen for more rigorous examination. The strength of this book comes in large part

from the fact that these four systems were studied not only to find out what actually happened but also to see how change had been, and might be, brought about. The authors conclude that the most effective system of criminal representation involves a mixture of salaried public defenders and private lawyers assigned under a program of education and centralized administrative assistance. Such a system should be monitored by trial courts, lawyers' organizations, and external groups, as well as being buttressed by effective grievance procedures and collective bargaining by the public defenders.

So ideal a solution takes resources. One way to minimize its cost, and to achieve otherwise desirable social goals, would be to abandon the criminal sanction for such conduct as prostitution, drug consumption, and domestic quarrels. But the political, social, and ethical case for such a step, however welcome, needs to have its measure taken in a context less specialized than the problem of providing lawyers for accused misdemeanants.

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Watchmen in the Night: Presidential Accountability after Watergate. By Theodore C. Sorensen. (Cambridge, Mass.: The MIT Press, 1976. Pp. 178. $3.95.)

In the wake of Watergate, many liberals who once sought to enhance the power of the presidency now seek to constrain it. Theodore Sorensen, special counsel to President Kennedy, is not one of them. In a series of lectures delivered in 1974, he rejected the idea that "the misdeeds of Richard Nixon" represent "the culmination of a long institutional evolution which steadily increased the powers of the Presidency" (p. 6). Instead, Sorensen argues, "those powers have indeed increased, and Watergate was in a sense facilitated by that trend. But the existence of the Nixon Presidency was more the result of political accident than institutional evolution" (p. 61). Were it not for the two Kennedy assassinations and Humphrey's narrow defeat, he says, 1968 might have thrust forward "a very un-Nixon kind of President, a man not in the least reclusive, or shy with the press, or remote from Congress" (pp. 61–62).

Not about to recant, this former acolyte retreats to scholasticism. For instance, in support of his assertion that "Nixon was not one of our strong Presidents," Sorensen plays with the terms of comparison: "Those whom history regards as strong Presidents had strong convictions about great national purposes which went well beyond skill in public relations and